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SUPREME COURT, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959.

No. 818

PAUL S. WOOLLEY,
Petitioner,

vs.

EASTERN AIR LINES, INC., a Delaware Corporation,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT.

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IN THE

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OCTOBER TERM, 1959.

No. .....

PAUL S. WOOLLEY,
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vs.

EASTERN AIR LINES, INC., a Delaware Corporation,
Respondent.

PETITION FOR WRIT OF CERTIORARI.

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

PAUL S. WOOLLEY petitions the Supreme Court of the United States for a review on certiorari, reviewing the decision of the United States Court of Appeals for the Fifth Circuit in case number 17,870, opinion rendered January 13, 1960, mandate issued February 11, 1960, in which the decision of the United States District Court in and for the Southern District of Florida was affirmed, case reported, 273 F.2d 615, Advance Sheet, February 29, 1960.

The grounds upon which your petitioner seeks to invoke the jurisdiction of the Supreme Court of the United

States are based upon the provisions of Rule 19, sub-section (b), as follows:

1. The United States Court of Appeals, 5th Circuit, has rendered a decision in conflict with the opinion of the United States Supreme Court in *Transcontinental & Western Air, Inc.*, v. *Koppal*, 345 U.S. 653, 73 S. Ct. 906, 97 L. Ed. 1325, and *Slocum* v. *Delaware, L. & W. R. R.*, 339 U.S. 239, 70 S. Ct. 577, 580, 94 L. Ed. 795.

2. The United States Court of Appeals, 5th Circuit, has decided an important question of Federal law which has not been but should be settled by this Court.

3. The United States Court of Appeals, 5th Circuit, has decided a Federal question in a way in conflict with the applicable decisions of this Court.

A copy of the opinion of the United States Court of Appeals, 5th Circuit, is attached hereto as an appendix to this petition for certiorari.

This opinion called for an interpretation of a previous decision by the United States Court of Appeals, 5th Circuit, of *Woolley* v. *Eastern Air Lines et al.*, 250 F.2d 86, petition for certiorari filed in this Court and denied, April 14, 1958 (356 U.S. 931, 78 S. Ct. 773).

A brief background of the litigation is as follows:

For many years prior to 1950, Paul S. Woolley was a captain pilot in the employ of Eastern Air Lines. In the winter of 1950, Eastern Air Lines had suspended Mr. Woolley, contending he had engaged in unsafe flying practice and in certain dissensions with a tower operator at the Detroit Airport.

At that time Captain Woolley as a pilot was represented by the Air Line Pilots Association as a bargaining repre-

sentative. There was a typical contract between Eastern Air Lines, Inc. and the Air Line Pilots Association as a bargaining representative, which provided for certain discipline procedure.

When Captain Woolley was suspended in the winter of 1950, he was represented by the Air Line Pilots Association, who filed a petition to review that suspension, but that petition was never determined, and Captain Woolley was reinstated in July of 1950. As a condition of that lifting of the suspension for reemployment, whatever it may be called, and as a condition for reemployment and not for discharge, Captain Woolley was required to sign an anticipatory letter of resignation, not as a condition, as aforesaid, for severing his employment, but as a condition for his reinstatement as an air line captain with full seniority.

Section 29 of said contract (Tr. 70) provided the procedure and grounds under which a pilot could be disciplined or dismissed, and under the contract the Company was prohibited from disciplining or dismissing a pilot without giving notification in writing and specifying in a written charge the precise charge or charges against him. A part of paragraph 4 of said contract provided (Tr. 71):

> "He shall be given the necessary time in which to prepare and to secure the presence of witnesses and shall have the right to be represented by an employee of the Company of his choice or by his duly accredited representative or representatives."

Provision was made for an appeal to the System Board of Adjustment which was created under the terms of this contract. It provided for the creation of a System Board of Adjustment. The contract is shown beginning Tr. 87, and paragraphs e and f of the contract provide (Tr. 89):

"(e) The Board shall have jurisdiction over disputes between any employee covered by the Pilots Agreement and the Company growing out of grievances or out of interpretation or application of any of the terms of the Pilots Agreement. The jurisdiction of the Board shall not extend to proposed changes in hours of employment, rates of compensation or working conditions covered by existing agreements between the parties hereto.

(f) The Board shall consider any dispute properly submitted to it by the President of the Association or by the Chief Operating Officer of the Company, when such dispute has not been previously settled in accordance with the terms provided for in the Pilots Agreement."

At Tr. 92 there is shown a provision:

"(l) Decisions of the Board in all cases properly referable to it shall be final and binding upon the parties hereto."

Paragraph (n) provides (Tr. 93):

"(n) Nothing herein shall be construed to limit, restrict or abridge the rights or privileges accorded either to the employees or to the employer, or to their duly accredited representatives, under the provisions of the Railway Labor Act, as amended, and the failure to decide a dispute under the procedure established herein shall not, therefore, serve to foreclose any subsequent rights which such law may afford or which may be established by the National Mediation Board by orders issued under law with respect to disputes which are not decided under the procedure established herein."

We ask the Court to note that the only position the Board of Adjustment occupied was to pass on grievances

covered within the terms of the pilots agreement, and that only the decisions of the Board would be binding where those cases had been properly referred to the Board under the terms of the contract.

The terms of the contract nowhere made any provision for special contracts on behalf of any of its members of the Union or any of the employees. The captain pilot did not sign the agreement, but he was represented by the Air Line Pilots Association. The law has been clearly established that the pilot is bound by the terms of that agreement to the extent that all other parties are bound. There is no provision in the contract or recognized in the law, whereby the Company can make any special contracts with its employee. They are all bound by the terms of the bargaining agreement.

Therefore, when Captain Woolley was reinstated in the latter part of July, 1950, he was then protected under the terms of the bargaining agreement then in effect and the one thereafter rewritten or revised in 1954. His special letter where he tendered a resignation in advance to the officers of Eastern Air Lines was contrary to the public policy and was void under the terms of the Railway Act.

Captain Woolley, as reflected by this record, continued as a captain pilot until February, 1956, when the Eastern Air Line operating officer simply directed a letter to Captain Woolley electing to exercise the option to accept his resignation, which was under the letter of July, 1950. He was not discharged for merit, and he was not discharged under any of the discipline provisions of either of the two contracts above mentioned.

When he petitioned the Board through the Air Line Pilots Association, objection was timely made that the resignation in advance of his reemployment was void, and

that the Company had no right to discipline or discharge or dismiss Captain Woolley, unless it was done within the purview of the discipline provisions of the contract. The System Board of Adjustment, contrary to any authority; and because the case was improperly referred to it in the first place, was without power to pass upon the merits of the right to accept the resignation. There was no provision in the contract which gave it, the Adjustment Board, the right to pass upon any condition of the employment which was not in the contract. Mr. Woolley was not discharged for merit or lack of merit. There was no showing that he had violated any of the rules and regulations of the Company, or normal safe flying conditions.

The Adjustment Board specifically did not pass on the merits, or lack of merits, in the discipline proceeding, but simply upheld the so-called right of the Company to accept a 6-year old resignation. These matters are all gone into in the original opinion, *250 F.2d 86*.

Captain Woolley then took his matter to the United States District Court, Southern District of Florida, and the opinion of that Court simply held that it did not have jurisdiction. That suit was not for wrongful discharge, but was simply a request by Woolley to invoke the jurisdiction of the Federal Court to the extent of having a Federal Court order that the System Board of Adjustment reopen the case, require the Company to file charges for dismissal or grounds for discharge, and to have a hearing thereon.

The District Court, nevertheless, after holding that it had no jurisdiction, upheld the actions of the Company and of the Board which had held that the Company had a right to accept the resignation.

An appeal was taken to the United States Court of Appeals, 5th Circuit, in which the issue was squarely pre-

sented to that Court, and in which it was claimed that if the United States District Court had no jurisdiction over the Board, then it had no right to hold that the action of the Board was final. It was contended in the said Court of Appeals that the System Board had no jurisdiction in the matter which was improperly referred to it, and that its opinion was a nullity since there had been no attempt made to pass upon the merits.

Nevertheless, the United States Court of Appeals, 5th Circuit, in the opinion referred to, upheld the District Court and held that the Federal Courts had no right to review the action of that System Board, regardless of whether it had jurisdiction of the subject matter or not.

Petition for certiorari was applied for in this Court, and this Court refused to entertain the petition for certiorari..

Paul S. Woolley, feeling that he had been discharged wrongfully and without any proper charges being filed against him by the Company under the terms of the bargaining agreement, then filed his suit in the Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida, for damages for wrongful discharge. This suit was only filed against Eastern Air Lines, Inc., and was not a suit against the Air Line Pilots Association International or any of the members of the Eastern Air Line Pilots Association.

It was contended that the ineffective attempt by Captain Woolley to have the United States Court order a review of the System Board of Adjsutment's action, was not final, that there had never been any court or board of adjustment which had ever passed upon the merits or demerits of his claim, and that he had been wrongfully discharged (Complaint, Tr. 4).

This cause was removed by Eastern Air Lines to the United States District Court, Southern District of Florida, and upon such removal, a motion to dismiss the complaint was filed on the grounds that the entire matter was *res judicata* and had been decided on the merits by the decision of the United States District Court, affirmed in *Woolley* v. *Eastern Air Lines et al.*, 250 F.2d 86. This motion is shown at Tr. 103.

On May 13, 1959 (Tr. 105), the District Court of the United States, Southern District of Florida, entered an order dismissing the complaint, and entered a judgment in favor of the defendant, Eastern Air Lines, Inc., against the plaintiff, Paul S. Woolley.

There still had been no opinion by any court on the merits, nor had Woolley ever had a trial on the merits even before the System Board.

This matter was then appealed to the United States Court of Appeals, 5th Circuit, which resulted in the opinion of January 13, 1960, now sought to be reviewed by certiorari in this Court.

In this opinion, the United States Court of Appeals, 5th Circuit, held that the proceedings in the court above referred to, resulting in the opinion in *250 F.2d 86*, was *res judicata* on all of the issues presented, and that even though all of the issues were not settled, yet they were presented for decision, and all of them could have been specifically settled in that case.

This Court will notice that the opinion did not say they were settled, but that under some strange doctrine of *res judicata*, they could have been or should have been settled.

Thus we have, in summary, this factual situation:

An air line captain employed by Eastern Air Lines, Inc., was represented by the Air Line Pilots Association and was bound by the terms of the bargaining agreement. He had no choice. All parties under that Air Line Pilots Association and members thereof were bound by the same terms and conditions. The Company could not make a special employment or special contract.

Captain Woolley had been admittedly working for six years under that contract, that is to say, from the last of July, 1950, up until his discharge in February, 1956. He was not discharged under any procedure or for any grounds under that contract, but Eastern Air Lines contended he was a special employee; that he was not protected by the provisions of the Federal law on the subject; that they had a right to contract with him separate and apart from the terms of the bargaining agreement.

Apparently it was contended that while Woolley was bound by all of the terms and conditions of that agreement, yet the Company was not. It was contended by the Company that it had a right to take an anticipatory resignation from a pilot employee, otherwise covered in the contract, and that he could be fired and his employment severed, and that he was not entitled to the protection of the bargaining contract in that procedure.

So we have a situation where, on the one hand, the pilot was bound, but the Company was not.

If Woolley was discharged by reason of the breach of a separate contract which had been dated in July, 1950, giving the Company the right with or without cause to accept the resignation, then that created one cause of action. If that is the contention of Eastern Air Lines, then cer-

tainly that point has never been tested by any proper court.

If, on the other hand, it is contended by the Company that Woolley is blocked from suing for wrongful discharge because of the action of the Adjustment Board, then where was the power of the Adjustment Board to pass upon this issue, when admittedly the ground for accepting the resignation was by separate contract which was in derogation of the collective bargaining agreement.

We find ourselves in a position where the Company claimed the discharge privileges of a separate outside and illegal contract, and yet at the same time claimed the benefit of a wholly void order by the Adjustment Board created only under the limited provisions of the bargaining agreement.

We say that the law of the United States as settled by this Court clearly prohibits such an interpretation, and Woolley has been deprived of his due process of law under these fictitious and irrelevant proceedings, and by the improper extension of the protective arm of the United States Courts, both for the Southern District of Florida and the United States Court of Appeals for the 5th Circuit.

At the outset, we wish to call this Court's attention to its late decision of *Union Pacific Railroad* v. *Price*, 360 U.S. 601, 3 L. Ed. 2d 1460, 79 S. Ct. 1351, decided June 29, 1959. The question involved in this case was whether a trainman could sue in a Federal Court for damages for his allegedly wrongful dismissal after he had been unsuccessful before the National Railroad Adjustment Board. The District Court for the District of Nevada granted a summary judgment for the Railroad. On appeal to the United States Court of Appeals, 9th Circuit (255 F.2d 653), that Court held that where the Board, in entering its award

denying the claim, neither found nor concluded that the Railroad was entitled to discharge the plaintiff, the plaintiff did not obtain an adjudication upon the merits in the proceedings before the Board. That Court held the trial court therefore had jurisdiction to entertain independent action by the plaintiff for damages, notwithstanding the proceedings before the Board.

This case was under the National Railroad Adjustment Board, which is constituted on a far different basis, and has more of a final judiciary function than we find in the Air Line Adjustment Boards.

It was also pointed out in the *Union Pacific* case that the law of Nevada did not require any claimant to exhaust his administrative remedies before resorting to courts. The Florida law, of course, is to the contrary, which we will hereinafter point out in our discussion of the case of *Sigfred* v. *Pan American World Airways*, 5th Circuit, 230 F.2d 13.

In that case, the United States Court of Appeals, 5th Circuit, recognized that the Florida law generally required the claimant to exhaust his administrative remedies before resorting to court action, but that court avoided the effect of that law for other Federal reasons.

When the Railroad then brought this question to this Court by certiorari, styled *Union Pacific Railroad* v. *Price*, *supra*, this Court granted certiorari, stating (79 S. Ct. 1354):

> "We granted certiorari to decide the important question raised by the case of the interpretation of the Railway Labor Act. 358 U.S. 892, 79 S. Ct. 155, 3 L. Ed. 2d 119."

However, this Court reversed the final holding of the United States Court of Appeals for the 9th Circuit because

of the scope of the language of the acts which created the National Labor Adjustment Board. At page *1355 of 79 S. Ct.*, it was said (360 U.S. 608):

> "Congress has said in Sec. 3 First (m) of the Railway Labor Act that the Adjustment Board's 'awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award.' * * * Thus, the plain language of Sec. 3 First (m), on its face, imports that Congress intended that the Board's disposition of a grievance should preclude a subsequent court action by the losing party."

This Court in its opinion pointed out that in the first Acts of Congress, particularly in the 1926 Act, there was no machinery set up and no requirement set up for a definite submission of these disputes of even the railway employees, and under that act, any proceedings before the Contractual Board would be in the nature of mere arbitration proceedings and would not be binding or conclusive so as to prevent court trial of the issues.

This Court in its opinion then set forth the record of the actions under the 1926 Act which resulted in the Act of 1934, or rather the amendment of 1934, in which Congress for the first time created the National Railroad Adjustment Board, and in that amendment Congress itself provided that the awards made by the National Railroad Adjustment Board would be final except insofar as they contained a money award. No such statutory provisions have been created with reference to air line employees.

This difference was first noted by the District Court of Appeal of Florida, Third District, in the case of *National Air Lines, Inc., Appellant,* v. *Paul I. Metcalf, Jr., Appellee,* 114 So.2d 229. Opinion rendered August 13, 1959, and in general this Appellate Court of Florida held (headnote 7)

"Where airline and union entered into collective bargaining agreement providing for a System Board of Adjustment to arbitrate all disputes with award of such Board to be final and binding, claims that Board exceeded jurisdiction by considering issues not submitted and that award was so arbitrary and capricious as to deny procedural due process were subject to judicial review."

"8. Although collective bargaining agreement between airline and union provided for arbitration of grievances pursuant to federal law, complaint seeking declaratory relief with respect to rights of parties under arbitration award did not present a federal question and hence state court had jurisdiction."

"9. Right created by federal statute does not require exercise of federal jurisdiction in all litigation arising therefrom, and if litigation concerns only private rights between parties and not a construction of Constitution or any federal statute, state court is proper forum."

In the body of that opinion (231), the Florida Court pointed out that the Congress had by its amendments of 1934, established a National Railroad Adjustment Board to hear disputes between railroad employers and employees, with an optional provision authorizing the creation of system, group or regional boards. The Court said (231):

"The Act was amended to include carriers by air (see 45 U.S.C., U.S.C.A., Secs. 181-188). The provisions of the Railway Labor Act, as found in Secs. 151, 152 and 154-163, were extended to air carriers by Sec. 181 of the Act. Section 184 required the air carriers and their employees to establish a board of adjustment with jurisdiction not exceeding the jurisdiction which would lawfully be exercised by a system, group or regional board of adjustment under the authority of Sec. 153 Second. Although the jurisdictional limits of Sec. 153 Second are adopted by reference in Sec. 184, it be-

comes apparent that it was the congressional intent to exclude the provisions of Sec. 153 First from application to air carriers as these provisions applied in a unique manner to railroads only. Section 185 provides for the creation of the National Air Transport Adjustment Board when such shall be deemed necessary by the National Mediation Board. This contingency has never arisen, thus the air industry at the present time has only an administrative agency to hear employer-employee disputes created by contract between each carrier and the bargaining agency for the employees. Insofar as the Railway Labor Act applies to the airlines, there is no procedure set forth for judicial review or enforcement of awards from these system boards of adjustment. To summarize, the railroad industry has a federal agency which hears all employer-employee disputes with a specific method of procedure and a limited judicial review, while the air industry has only the system boards created by contract on the local level with no prescribed procedure for judicial review."

The Court then pointed out (232):

"In the absence of any specific grant of jurisdiction to the federal courts to enforce awards of the airlines system boards of adjustment, it would appear that the federal courts lack such jurisdiction.

* * *

* * * The contract under which the System Board of Adjustment was created provided that 'decisions of the Board in all cases properly referable to it shall be final and binding upon the parties hereto.' Accordingly, neither the federal courts nor the state courts would be authorized in re-trying the merits of the controversy. However, the agreement to arbitrate these disputes and be bound by the award does not preclude a review of procedural due process and jurisdictional limitations. In Farris v. Alaska Airlines, D.C., 113 F. Supp. 907, 908. * * *.

* * *

The claims that the Board exceeded its jurisdiction by considering issues not submitted and that the award is so arbitrary and capricious as to deny procedural due process would, we think, be subject to review. Courts have universally examined arbitration awards for these defects despite any requirements of finality. Cf. Fla. Stat., F.S.A., Sec. 57.22. See Sturges, Commercial Arbitrations and Awards, Secs. 361, 367."

A similar case was presented simultaneously in the United States District Court, Southern District of Florida, also brought by *Paul I. Metcalf, Jr. v. National Airlines, Inc.*, and in that case the United States District Court, Southern District of Florida, Miami Division, entered a judgment dismissing the claim of Paul I. Metcalf seeking to enforce an award of the System Adjustment Board. This judgment was appealed to the United States Court of Appeals, 5th Circuit, cause number 17773, and the decision was rendered by that Court on December 1, 1959, 271 F.2d 817.

In the body of the opinion, the United States Court of Appeals for the 5th Circuit, in upholding the decision of the lower court, for the first time in any appellate Federal Court, pointed out the same defect or the same difference between the Railroad Adjustment Board and the Airline Boards which had been recognized and set out so clearly in the Florida Appellate Court opinion above referred to, and definitely found that there was a vast difference between the finality of the law and the procedure set up by Congress for the National Railway Labor Act applying to various employees, and that which was applicable to air carriers and their employees. In the body of the opinion the Court made this statement:

"Congress made even more clear that it was not elevating to the same rank the status of an award by such *system* board in the airline industry as was

granted to an award of the National Railway Labor Adjustment Board by then providing in Section 185 for the future creation of a similar National Board for the air industry when in the judgment of the National Mediation Board 'it shall be necessary to have a permanent national board of adjustment.'"

The Court pointed out that if the National Mediation Board ever set up that machinery, then the legislative scheme would be complete, and said:

"Thus, the legislative scheme is complete. All the provisions of the Railway Labor Act are adopted for the air industry except section 153; instead of giving similar relief to 153, special provision is made for adjustment of labor disputes by system or regional boards with no legislative determination as to their finality or as to their being the basis of federal suit jurisdiction; but all of the provisions of Section 153 are brought into play, including the right granted in subsection (p) to sue on an award in the federal district court, when and if the National Mediation Board exercises the judgment granted it in Section 185.

Both parties here agree that this precise question has not heretofore been passed upon by the United States Courts."

Then the Court, in conclusion, said:

"The argument made by appellant that the statute must be construed so as to give the district court jurisdiction because otherwise he is without a remedy to enforce a federally enacted right is, of course, without foundation. The state courts have full and complete jurisdiction to grant relief on such an alleged contractual right. There is nothing unusual in a holding that the state courts apply the federal law just as do the federal courts if the cause is one as to which federal law controls. The Florida District Court of Appeals (Third District) has already decided, in a declaratory

judgment suit arising out of this same award, that the Florida state court had jurisdiction to entertain the suit. *National Airlines, Inc.* v. *Metcalf*, 114 So.2d 229. We think the decision of that court accepting jurisdiction of the cause is correct."

If we apply the doctrine of this opinion accepting and approving, as it does, the decision of the Florida Appellate Court, then certainly the suit by Paul S. Woolley for damages for wrongful breach of the contract was properly filed in the State Court, and when the cause was transferred or removed to the Federal Court, it was only on the usual ground of diversity of citizenship, the plaintiff being a Florida citizen and Eastern Air Lines being a foreign corporation, resident of another state.

On a removal case of this type, the Florida law should have been applied, rather than any peculiar jurisdiction which may have been created under the Acts of Congress, or where there was a construction of either the Federal Constitution or any construction of the Federal Railway Labor Act.

It is therefore apparent that the opinion of the United States Court of Appeals for the 5th Circuit in the *Metcalf* case is directly contrary to its so-called application of the law in this case, and it appears that the Federal Courts have never had the jurisdiction to uphold the finality of the Eastern Air Lines System Board of Adjustment or to construe the finality of the award made by that Board in the Woolley case. That was a matter which had to be determined only in a suit by Woolley for breach of the contract, and the proceedings in the previous Woolley cases could not be *res judicata* when the only effect of that opinion was that the Federal Courts had no right to review the actions of the contractual Board of Adjustment or to enforce or correct that contract.

Thus we have a situation where, under the Florida law, this contractual Board is nothing more or less than an Arbitration Board, and its findings are not made final by any Act of Congress or by any act of the State of Florida. To the contrary, the Florida Statute referred to, Section 57.22, was and is directly applicable. This statute gives the Court the right to review any arbitration award upon the application of either of the parties, and names certain grounds, as follows:

"(a) The award was procured by corruption, fraud or other undue means;

(b) There was evident partiality by an arbitrator appointed as a neutral or cofruption in any of the arbitrators or umpire or misconduct prejudicing the rights of any party;

(c) The arbitrators or the umpire in the course of his jurisdiction exceeded their powers;

* * *

(e) There was no agreement or provision for arbitration subject to this law, unless the matter was determined in proceedings under Sec. 57.12 and unless the party participated in the arbitration hearing without raising the objection."

Other procedures are set forth in that act.

It is therefore apparent under the decision of the *Metcalf* case, both in the State Court and in the United States Court of Appeals, 5th Circuit, that under this Florida law some court had the right to review the findings of this contractual Board of Adjustment, when it assumed powers of attempting to construe conditions and matters and things not even covered in the bargaining contract. That contractual System Board of Adjustment admittedly could only adjudicate as arbitrators issues which they were

empowered to hear and determine. So far in the proceedings in the *Woolley* cases, there has been no claim by the Air Line Company and no finding by any of the Federal Courts, that a resignation given in 1950 as a preliminary to employment or reinstatement of an airline captain, would be valid and binding upon the Company or the employee where those same or similar provisions or conditions were not included as a part of the collective bargaining agreement.

The cases throughout the United States, both State and Federal, have been consistent in holding that such contracts are void and against public policy. Surely, if Captain Woolley had been given a contract for additional compensation over and above that provided for in the general collective bargaining agreement, and then after he took employment under the collective bargaining agreement under the National Railway Labor Act, he attempted to enforce that special contract, he would certainly have met with an adverse ruling.

Now, however, the Air Line claims that it had a special right under that 6-year old offer of resignation. There is substantial fundamental wrong in such a condition or conclusion, and yet that is where petitioner, Paul S. Woolley, now finds himself. He is now completely barred from any right to have a court review the finding of the Adjustment Board by the claim of *res judicata* and by the action of a court which did not have jurisdiction in the first place. He is not now trying to enforce his contract of employment or to continue as an employee of the company, but he is simply seeking relief in the State Court under the State law to determine whether there was a wrongful breach of the collective bargaining agreement which was a third party contract for his benefit.

Assuming that a mere conflict in the opinions of the United States Court of Appeals for the 5th Circuit, or a conflict between its opinions and those of the Appellate Court of Florida, would not necessarily and of itself give this Court jurisdiction to grant certiorari and to review the judgment, yet it is our contention that the decisions of this Court are so clear that it is apparent that the final decision of the United States Court of Appeals now sought to be reviewed, is contrary to these decisions.

We think the question was settled by this Court in the case of *Transcontinental & Western Air, Inc.* v. *Koppal*, 345 U.S. 653, 73 S. Ct. 906 (1953 decision). This case involved an employee of the Transcontinental & Western Air, Inc., a Delaware corporation, which company was a carrier by air, subject to the Railway Labor Act. The terms of the employee's employment contract were stated in the written collective bargaining agreement between the said Company and the International Association of Machinists. Koppal was suspended from employment on a charge of abuse of sick leave provisions of his contract, and he was granted a hearing before the Grievance Board. The facts were further analyzed in the opinion by this Court (73 S. Ct. 907):

> "He attended the hearing, which was held before a representative of petitioner other than the one bringing the complaint. At its conclusion, the hearing officer stated that there had been a severe abuse of the sick-pay policy and that respondent would be discharged. In view of respondent's past favorable record, the hearing officer asked him whether he would prefer to resign and advised him that he could appeal even if he resigned.
>
> Respondent resigned, stating that he did so 'under protest.' He took no appeal under his employment contract but, June 30, 1950, instituted the present pro-

ceeding in the United States District Court for the Western District of Missouri, claiming diversity of citizenship and seeking $7,500 compensatory and $15,000 punitive damages."

It appears from the opinion that the jury returned a verdict for $7,500, and that the lower court set the verdict aside and dismissed the complaint on the ground that respondent had failed to appeal the original decision of the hearing officer, and had otherwise failed to exhaust the remedies prescribed in his employment contract. The Court of Appeals, with one Judge dissenting, reversed that judgment and remanded the case for further proceeding (8th Cir., 199 F.2d 117). This Court said (907):

> "Because of differing opinions expressed as to the effect of our decisions in Moore v. Illinois Central R. Co., 312 U.S. 630, 61 S. St. 754, 85 L. Ed. 1089, and Slocum v. Delaware, L. & W. R. Co., 339 U.S. 239, 70 S. Ct. 577, 94 L. Ed. 795, and due to the importance of the case in relation to the Railway Labor Act, we granted certiorari. 344 U.S. 933, 73 S. Ct. 504."

The Court then said (908):

> "The jurisdiction of the District Court rested upon diversity of citizenship and an adequate amount in controversy. The complaint sought judgment for damages resulting from the alleged unlawful discharge of respondent in violation of a contract of employment made in Missouri, to be performed in Missouri and agreed by the parties to be a 'Missouri contract.' Accordingly, if the Railway Labor Act were not involved, there would be no question but that the substantive law of Missouri should determine the requirements of the cause of action, the interpretation of the contract and the measure of damages to be applied.
>
> * * *
>
> No decision of the Supreme Court of Missouri has been cited on the point but the law of Missouri has

been shown, by the following cases, to be that an employee must exhaust the administrative remedies under his contract of employment in order to sustain his cause of action in such a case."

Then this Court, in analyzing several of the Missouri decisions, concluded by stating (909):

"Under the law of Missouri, as shown above, respondent was required to show exhaustion of administrative remedies under his employment contract in order to sustain his cause of action. As he did not do so, the District Court's dismissal of his complaint was justified, unless the fact that petitioner was a carrier subject to the Railway Labor Act or the fact that the employment contract was drafted pursuant to that Act should make a difference."

The Court then continued (909-910):

"The important point is that while the employment contract conforms to the Act provides a procedure for handling policy of the Railway Labor Act and the grievances so as to avoid litigation and interruptions of service. the Act does not deprive an employee of his right to sue his employer for an unlawful discharge if the employee chooses to do so.

'We find nothing in that (Railway Labor) Act which purports to take away from the courts the jurisdiction to determine a controversy over a wrongful discharge or to make an adminstrative finding a prerequisite to filing a suit in court. * * * The District Court and the Circuit Court of Appeals properly decided that petitioner was not required by the Railway Labor Act to seek adjustment of his controversy with the railroad as a prerequisite to suit for wrongful discharge.

* * *

We amplified the foregoing statement in Slocum v. Delaware, L. & W. R. Co., 339 U.S. 239, 244, 70 S. Ct. 577, 580, 94 L. Ed. 795, as follows:

'Moore (in 312 U.S. 630, 61 S. Ct. 754, 85 L. Ed. 1089) was discharged by the railroad. He could have challenged the validity of his discharge before the Board, seeking reinstatement and back pay. Instead he chose to accept the railroad's action in discharging him as final, thereby ceasing to be an employee, and brought suit claiming damages for breach of contract. As we there held, the Railway Labor Act does not bar courts from adjudicating such cases. A common-law or statutory action for wrongful discharge differs from any remedy which the Board has power to provide; and does not involve questions of future relations between the railroad and its other employees. If a court in handling such a case must consider some provision of a collective-bargaining agreement, its interpretation would of course have no binding effect on future interpretations by the Board.'"

The ultimate decision of the Court was to the effect that this air carrier employee did not fully exhaust his administrative remedy under his bargaining contract because he only went through the first step of the administrative remedy, and that that was not a complete exhaustion of his administrative remedy.

On the other hand, if he even went to the Adjustment Board, or exercise any step in that procedure, under some of the other decisions by the Federal Courts, particularly if he was a railroad employee, he would be barred from any further procedure. If we construe the statement by this Court which we have above quoted and reiterate:

"A common-law or statutory action for wrongful discharge differs from any remedy which the Board has power to provide, and does not involve questions of future relations between the railroad and its other employees",

as being the fundamental law, then Woolley could not have exhausted his remedies because admittedly under the Florida law any claimant must exhaust his administrative remedies before resorting to court action.

The Florida law was very properly analyzed in the decision by the United States Court of Appeals, 5th Circuit, in the case of *Sigfred* v. *Pan American World Airways*, 230 F.2d 13. In that case, Sigfred, a captain pilot with Pan American World Airways, Inc., was discharged because of an ear injury. He filed a suit in the Florida State Court asking for determination of his rights under the collective bargaining agreement. Pan American World Airways, Inc., being incorporated in a state other than Florida, removed the case to the Federal District Court, and that Court declined jurisdiction and dismissed the complaint without prejudice until the plaintiff could exhaust his administrative remedies in the Railway Labor Act or elect to pursue his statutory or common law remedy for breach of contract for wrongful discharge.

Sigfred then filed his claim for workmen's compensation with the Florida Industrial Commission and obtained an award to the effect that his disablement was the result of occupational injury. Then, having established this right he demanded full payment from the Company, and the Company denied liability beyond the workmen's compensation award, and Sigfred then, pursuant to the original opinion of the District Court of the United States, exhausted his appeal to the Pilot System Board of Adjustment, which disallowed the claim.

Sigfred then brought suit in the United States District Court, challenging the Board's construction of the collective bargaining agreement and seeking damages. The District Court dismissed the complaint on the ground that

the Board's interpretation of the contract was correct, and he, Sigfred, took the appeal.

Then the Pan American World Airways for the first time in the Appellate Court urged that since the plaintiff had elected to pursue the administrative route through the System Board, that was a final and binding determination. They had taken exactly the opposite position the first time when they objected to Sigfred's action because he had not exhausted his administrative remedy. Sigfred contended that his election to pursue his remedy to the Pilots System Board of Adjustment was not voluntary, but pursuant to the Florida law; that the Florida law governed the reviewability of the Board's award; that under the Florida rule of reviewability of arbitration awards, all pure questions of law may be re-examined by the reviewing court, and that a review of the Board's interpretation would reveal it to be erroneous.

The Court evaded the issue as to whether the Florida law actually required Sigfred to exhaust his administrative remedies, and referred to the decisions of the Supreme Court of Florida, among them the case of *Glens Falls Ins. Co.* v. *Gulf Breeze Cottages*, 38 So.2d 574. The Court resolved the case by stating that it did not make any difference what the Florida law was on the subject; that it thought it was purely a matter of Federal construction, and said that if Florida had such a law or rule as that contended for, the Federal Courts would not recognize it.

This opinion was a two to one decision, and the majority opinion, which was issued in 1956, did not even mention or discuss the opinion of this Court in *Transcontinental & Western Air* v. *Koppal*, *supra*, nor did the majority opinion point out the difference between the Federal cases applicable to the railroad employees, and

the case which would be applicable to an air carrier employee. This distinction was not recognized by the United States Court of Appeals, 5th Circuit, until its opinion in December, 1959.

In the dissenting opinion written by Judge Brown, the *Transcontinental* case was discussed and it was pointed out, and we quote from 230 F.2d 13, 25:

> "Since Sigfred was required, either by Florida law, or by reason of an authoritative decision which Pan American is not now free to question applying Florida law, to pursue his remedy through the System Adjustment Board, it is evident that, in assaying its impact upon his rights, the so-called 'election' was not voluntary, that is, one resulting from his free choice. But as I view it, this coercive characteristic need not alone be decisive here.
>
> If, as Koppal holds, the Railway Labor Act does not pull a Moore case out of Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188, to determine suability, I think it likewise follows that the state law will also determine the scope and force of the mandated administrative action. Florida law declares that, unless the proceeding is a Florida statutory arbitration, a party to an arbitration proceeding may have an unlimited right of court review on asserted errors of law. Glens Falls Ins. Co. v. Gulf Breeze Cottages, Inc., Fla., 38 So.2d 828. See Steinhardt v. Consolidated Grocery Co., 80 Fla. 531, 86 So. 431; Hanover Fire Ins. Co. v. Lewis, 28 Fla. 209, 10 So. 297.
>
> Indeed, so strong is this Florida policy against ousting the courts of jurisdiction, that even assuming the pursuit of the administrative remedy was, in a legal sense, voluntary, the Florida courts would still be open for review of errors of law."

In addition to the cases above mentioned, Judge Brown in his opinion also quoted many other Florida decisions, some of which are:

Ervin v. *City of North Miami Beach*, 66 So.2d 235.
DeCarlo v. *Town of West Miami*, 49 So.2d 596.
Morrison v. *Plotkin*, 77 So.2d 254.

We respectfully say that the opinion now sought to be reviewed is directly contrary to the decision of this Court of *Transcontinental & Western Air* v. *Koppal, supra.*

This Court took jurisdiction of a similar issue where a railroad employee was involved. The basis for its holding in that case—*Price* v. *Union Pacific Railroad*—was founded solely upon the fact that the railroad employees were covered by a completed legislative enactment.

Now, what is the law, assuming that a similar situation is presented, affecting an airline employee? This case is a matter of great public importance. There is admitted utter confusion in the opinions of the Federal Courts below the level of this Court. The Judges of the same Courts are in conflict. The United States Court of Appeals for the 5th Circuit has been so confused that it adopted an entirely inconsistent rule in the case of *Woodward Iron Company* v. *Ware*, 261 F.2d 138, in which a Union member under a collective agreement was discharged, and pursued his remedy through the Administration Board. One of his associates was also discharged, but he did not pursue his administrative remedy. The Court upheld the right of both employees to sue for breach of contract under the Alabama law for damages for unlawful discharge.

There is utter inconsistency in the application of these principles of law under these collective bargaining agreements which can only be determined if this Court will, in

the exercise of its broad jurisdictional powers, grant certiorari and review this case.

Respectfully submitted,

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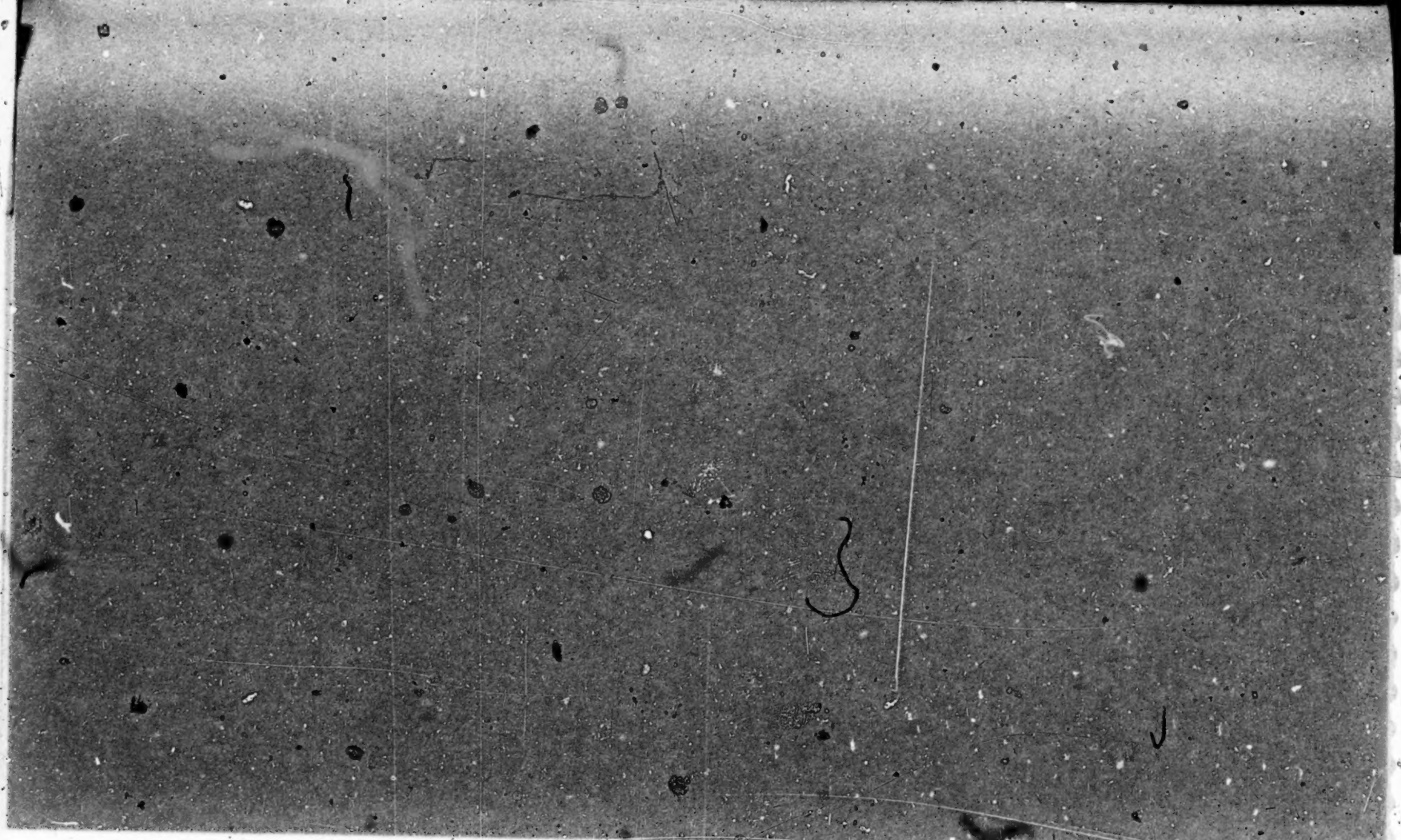

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 17870

PAUL S. WOOLLEY,

Appellant,

versus

EASTERN AIR LINES, INC.,

Appellee.

Appeal from the United States District Court for the Southern District of Florida.

(January 13, 1960.)

Before RIVES, Chief Judge, and HUTCHESON and CAMERON, Circuit Judges.

PER CURIAM: Seeking to plead around, and thereby escape the binding effect as res judicata of, the judgment[1] in an earlier action he had brought against ap-

---

[1]Affd Woolley v. Eastern Airlines, 250 F(2) 86.

pellant in the Southern District of Florida, appellant, plaintiff below, brought this suit in the Circuit Court of Dade County, Florida. The cause was removed to the Southern District of Florida, where the defendant, raising the defenses of *res judicata* estoppel by judgment and estoppel by verdict, based on the judgment of the district court in the earlier case and its affirmance in this court, moved to dismiss, the motion was granted, judgment was entered for defendant, and plaintiff appealed.

Here generally attacking the correctness of the judgments and decisions below and here in the earlier case and particularly insisting that the issues adjudicated in this case are not the same as, and the judgment in this case is, therefore, not controlled by, the judgments in the earlier case, plaintiff urges upon us that the judgment must be reversed.

Repelling the attack on the reasoning of this court in the former *Woolley* case, on the ground that it is a collateral attack upon the judgment pleaded in bar and, therefore, inadmissible, appellee resists the attack on the plea of *res judicata*, that the issues actually raised and settled in the earlier case are not the same as those decided here, on the grounds: (1) that the record does not at all support this claim; and (2) that if any phase of the issues presented for decision here was not in terms discussed and decided there, all of them were actually presented, all could have been specifically raised and settled there, and the bar of the plea is therefore as fully effective as to them as if they had been precisely discussed and determined. Cf. *Commissioner* v. *Sunnen*, 333 U.S. 591; *Angel* v. *Bullington*, 330 U.S. 183; *Chicot County Drainage Dist.* v. *Baxter State Bank*, 308 U.S. 371.

As to appellant's claim that later cases from this court, such as *Woodward Iron Co.* v. *Ware*, 261 F(2) 138; *Cook* v.

Missouri Pacific R.R., 263 F(2) 954; and *Paul Metcalf* v. *National Airlines*, (Dec. 1, 1959) . . . . F(2) . . . . ; are in conflict with our earlier decision in the *Woolley* case, appellee insists that nothing said or held in any of them or in any other case cited by plaintiff is in anyway in conflict with, or contrary to, them.

A careful and thorough consideration of these contentions convinces us: that, on the simplest principles with which the law has to deal, the judgment pleaded in bar is a complete defense to plaintiff's suit; that the judgment appealed from was rightly entered; and that it must be

AFFIRMED.

JUDGMENT.

Extract from the Minutes of January 13, 1960.

No. 17870

PAUL S. WOOLLEY,

versus

EASTERN AIR LINES, INC.

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be; and the same is hereby, affirmed;

It is further ordered and adjudged that appellant, Paul S. Woolley, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

FILE COPY

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JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 818

PAUL S. WOOLLEY,

Petitioner,

—v.—

EASTERN AIR LINES, INC., a Delaware Corporation,

Respondent.

BRIEF OF RESPONDENT EASTERN AIR LINES, INC. IN OPPOSITION TO PETITION FOR CERTIORARI

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April 20, 1960

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IN THE

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—v.—

EASTERN AIR LINES, INC., a Delaware Corporation,

Respondent.

BRIEF OF RESPONDENT EASTERN AIR LINES, INC. IN OPPOSITION TO PETITION FOR CERTIORARI

The Decisions Below

This case has been decided twice by the United States District Court for the Southern District of Florida, the first time in 1956 (*R. 9-10*) and *the second time* on May 18, 1959 (R. 105-106). Neither decision of the District Court has been reported.

This case likewise has been decided twice by the United States Court of Appeals for the Fifth Circuit, the first decision (see R. 10) being reported at 250 F. 2d 86 (1957) and the second decision (see R. 112-116) being reported in 273 F. 2d 615 (1960).

This Court denied certiorari with respect to the first decision of the Court of Appeals in this case. 356 U. S. 931 (1958).

Statutes Involved

Although *res judicata* bars the attempt of Woolley to relitigate the issues which were finally settled in the first appearance of this case, the following statutory provisions relate to the merits of such issues and will be referred to in this brief:

Railway Labor Act, Section 3, First (m), 44 Stat. 578, as amended by 48 Stat. 1189, 45 U. S. C. 153:

> "(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute."

Railway Labor Act, Section 204, 49 Stat. 1189, 45 U. S. C. 184:

> "The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act before the National Labor Relations Board, shall be handled in the usual manner up to and including the chief

operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with a full statement of the facts and supporting data bearing upon the disputes.

"It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of this title, to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 3, Title I, of this Act."

Questions Presented

Woolley has not set forth in his petition for certiorari the questions which he deems to be presented for review. Respondent believes that the issues are:

1. Whether Woolley may relitigate in this action, started in 1959, issues which were finally adjudicated by the District Court in 1956, such adjudication being affirmed by the Court of Appeals in 1957, certiorari being denied by this Court in 1958.

2. Whether there is any basis for reconsideration of the issues previously adjudicated even if relitigation were possible.

Respondent will also show hereinafter that the petition for certiorari should be denied for failure to comply with this Court's Rules.

Statement of the Case

The issues of this case (which will hereinafter be referred to as the "second *Woolley* case") have been before this Court previously and have been finally decided in *Woolley* v. *Eastern Air Lines, Inc.*, 250 F. 2d 86 (5th Cir. 1957), *cert. denied*, 356 U. S. 931 (1958) (hereinafter referred to as the "first *Woolley* case"). Petitioner has presented the Court with no basis for further consideration of such issues, and therefore Eastern Air Lines, Inc. (hereinafter referred to as "Eastern") respectfully submits that the petition for certiorari should be denied and dismissed.

The facts of this case are well summarized in the Court of Appeals decision in the first *Woolley* case as follows (250 F. 2d 87-89):

> "Appellant Woolley had been laid off in 1950 by Eastern Air Lines for alleged unsafe flying practices. After considerable negotiations conducted on his behalf by the Air Line Pilots Association, his bargaining representative, the company agreed to take him back after six months suspension on condition that he sign a letter of resignation which could be accepted by Eastern's Vice President of Operations 'at any time in the future, should you personally feel that I am not handling my job in the proper manner.'
>
> "On February 20, 1956, Eastern wrote a letter to Woolley purporting to accept the resignation by using the words contained in his letter of July 25, 1950, 'I personally do not feel that you have been handling your job in the proper manner.' Thereupon Woolley replied by stating that he had been discharged without the benefit of the grievance procedures provided in the collective bargaining agreement, specifically an investigation and hearing. In response to this Eastern

replied that this was the acceptance of a resignation rather than a discharge, but that the writer would talk to Woolley two days later, and then stated that the company's action had been 'based in large part on unsafe flying of a certain flight and Woolley's 'handling' of another flight. Woolley went to the office of the vice president Shannon and there discussed everything he cared to discuss with him about the matter. He made no request for any other or further hearing or investigation and he did not ask for any further specification of charges. On March 2nd he received a further letter from Shannon, adhering to the original action.

"Thereafter Woolley asked the Air Line Pilots Association to take the matter to the System Board of Adjustment, which was done. A full hearing was had before the Board, which resulted in a decision favorable to the air line.

"Woolley thereafter filed this suit joining the Eastern Air Lines, the Air Line Pilots Association, International, and the individual members of the Board of Adjustment, as defendants. In it he sought a declaratory judgment determining his rights and a mandatory injunction requiring the Board of Adjustment to 'cancel and discharge' their adverse order and requiring the air line defendant to reinstate him with back pay and benefits 'unless and until the said Eastern Air Lines, Inc. shall have filed an appropriate order of discharge for cause, and the defendant Eastern Air Lines Pilot System Board of Adjustment has had a complete and adequate hearing within the confines of its jurisdiction and either granted or denied the grievance complained of, if any, for cause.'"

The trial court in the first *Woolley* case granted Eastern's motion for summary judgment, the Court of Appeals affirmed, certiorari being denied by the Supreme Court.

The second *Woolley* case was filed by Woolley initially in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida (R. 4), but was removed by Eastern to the United States District Court for the Southern District of Florida (R. 1). Eastern filed a motion to dismiss (R. 103), raising the defenses of *res judicata*, estoppel by judgment, and estoppel by verdict, basing such defenses on the decisions of the District Court, the Court of Appeals and the Supreme Court in the first *Woolley* case. The trial court sustained Eastern's motion to dismiss, and the Court of Appeals affirmed (R. 112-116, 273 F. 2d 615 (1960)).

Summary of Argument

All substantive issues presented by the petition for certiorari have been adjudicated in the first *Woolley* case. As the Court of Appeals held in the second *Woolley* case (R. 115):

> ". . . on the simplest principles with which the law has to deal, the judgment pleaded in bar is a complete defense to the plaintiff's suit . . ."

While Woolley appears to argue (his petition, pp. 17, 19) that the Federal courts did not have jurisdiction in the first *Woolley* case, he himself invoked that jurisdiction and it is clear (and Woolley admits—his petition, p. 17) that the courts had jurisdiction pursuant to diversity of citizenship. Hence, all issues were before the courts and Woolley is barred from further litigation of the same issues in this case.

Numerous court decisions, including *Union Pacific Railroad* v. *Price*, 360 U. S. 601 (1959), hold unanimously that

an employee subject to the Railway Labor Act may not sue his employer in the courts for wrongful discharge after he has submitted a demand for reinstatement and back pay to an Adjustment Board created under the Act and has received an adverse decision of such Adjustment Board. Contrary to Woolley's contention, there are no court decisions inconsistent with that holding.

Woolley's petition for certiorari does not comply with this Court's Rules and for that additional reason should be denied.

ARGUMENT

I.

This action is barred by *res judicata*.

It is basic and unchallenged law that issues which have been litigated and adjudicated cannot be revived and relitigated between the same parties. *Commissioner of Internal Revenue* v. *Sunnen*, 333 U. S. 591, 597 (1948); *Angel* v. *Bullington*, 330 U. S. 183, 192-193 (1947); *Chicot County Drainage Dist.* v. *Baxter State Bank*, 308 U. S. 371, 378 (1940); *Peckham* v. *Family Loan Co.*, 196 F. 2d 838, 840-841 (5th Cir. 1952). It is further settled, by the same authorities and many others, that the doctrine of *res judicata* applies not only to issues actually raised in the prior litigation, but also to those issues which could have been raised and settled as part of the same proceeding.

All the issues raised in the second *Woolley* case actually were raised and settled in the first *Woolley* case. Woolley's attempt to give old issues the appearance of new ones is transparent; but even if there were new issues, they could not be successfully prosecuted in this action in view of the obvious opportunity which Woolley had to present all of his contentions in the first *Woolley* case.

Woolley says (petition, p. 2) that the decision of the Court of Appeals in the second *Woolley* case is "in conflict with the opinion of the United States Supreme Court" in *Transcontinental & Western Air, Inc.* v. *Koppal*, 345 U. S. 653 (1953) and *Slocum* v. *Delaware L. & W. R.R.*, 339 U. S. 239 (1950).

It is apparent that Woolley is not referring to the second *Woolley* decision, which he now asks this Court to reverse, for the Court of Appeals in the second *Woolley* case held simply that his action was barred by *res judicata*. There is no conflicting rule of *res judicata* in the *Koppal* case or in the *Slocum* case.

Woolley further says (petition, p. 2) that the Court of Appeals decision involves "an important question of Federal law which has not been but should be settled by this Court." Again, Woolley obviously is not referring to the second *Woolley* decision, as the rule of *res judicata* there announced has long been established, and repeatedly followed by this Court.

Woolley also says (petition, p. 2) that the decision of the Court of Appeals is "in conflict with the applicable decisions of this Court." Clearly there is no conflict between the doctrine of *res judicata* announced by the Court of Appeals and that uniformly followed by this Court.

Thus, it is clear that Woolley's present attack on the "decision" of the Court of Appeals is all directed against the first *Woolley* decision—not the one which he asks this Court to review. Certainly this Court could not allow such a belated collateral attack on a decision which has been concluded by denial of certiorari.

Woolley's claimed basis for avoiding *res judicata* is difficult to understand and impossible to support. He appears to say (petition, pp. 17, 19) that the Federal courts did

not have jurisdiction in the first *Woolley* case and therefore the first *Woolley* decision is without effect. Yet, Woolley himself invoked the jurisdiction of the Federal court in the first *Woolley* case, and he admits (petition, p. 17) that the Federal court had jurisdiction "on the usual ground of diversity of citizenship"; and he appears to say only that the Federal court was obligated to follow Florida law (petition, p. 18). If there had been a misapplication of Florida law in the first *Woolley* case, such an error would not have deprived the Federal court of jurisdiction; and any attack on the correctness of the decision would have to be made in *that case*. *Res judicata* would prevent any collateral attack in *this case*. However, as we shall show in the next portion of this brief, there was no misapplication of Florida law, and the first *Woolley* decision is entirely correct and is supported by the recent decision of this Court in *Union Pacific Railroad* v. *Price*, 360 U. S. 601 (1959).

II.

Even if it were not barred by *res judicata*, Woolley's attack on the first *Woolley* decision is without merit.

In the first *Woolley* decision, the Court of Appeals held in part as follows (250 F. 2d 90):

> "It is to be borne in mind that no air line pilot is required by the collective bargaining agreement or by the law to take his dispute to the system board of adjustment. The two Supreme Court decisions in Slocum v. Delaware L. & W. R. Co., 339 U.S. 239, 70 S.Ct. 577, 94 L.Ed. 795, and Moore v. Illinois Central R. Co., 312 U.S. 630, 61 S.Ct. 754, 85 L.Ed. 1089, make clear the election that is available to the employe. If he determines that he will treat his grievance as involving a determination of rights as an employe under the

bargaining agreement *and asserts his rights to be retained as an employe he must go to the board for redress.* If he accepts the action of the carrier as a final discharge he may sue in court for a breach of the contract of employment. *He may not do both.*" (Emphasis added.)

After citing numerous other authorities holding that the Adjustment Board decision is binding under such circumstances, the Court of Appeals met Woolley's contention that the Adjustment Board had no jurisdiction by saying (250 F. 2d 91):

> "There can be no doubt here that the Board had jurisdiction of the dispute, at least as to any challenge by appellant because he invoked its jurisdiction."

While holding that no cause of action was stated by Woolley's complaint, the Court of Appeals went further (250 F. 2d 91-92) and held, contrary to Woolley's contentions:

1. That there was extensive evidence "which fully warranted the Board's decision that the air line had good and sufficient reason for accepting the resignation."

2. That the "trial court equated the finding of the Board that there was good and sufficient reason to accept the resignation with a finding that ample grounds existed for a discharge," and upheld that Board finding.

3. That "We think this decision was correct," and the evidence was sufficient "to support a finding of adequate grounds for discharge."

4. That "There is no merit in the contention that the issue of the validity of his discharge . . . was not before the Board."

5. That "Finding as we do that the Board of Adjustment had full jurisdiction invoked by appellant himself, and that there is no contention that the Board was not properly constituted or that there were other circumstances that would permit a collateral attack, the decision of the Board was final and binding and may not be reviewed."

6. That if the Board decision were subject to review, "the finding of the trial court that the decision of the Board was fully supported and thus was not reviewable on the merits is right."

Woolley's apparent contention (petition, p. 8) that the Adjustment Board did not rule on the merits of his discharge is answered not only by the square ruling of both lower courts in the first *Woolley* case, but also by this Court's analysis of the Adjustment Board decision involved in *Union Pacific Railroad* v. *Price*, 360 U. S. 601, 606-607 (1959). Certainly where the issue of discharge was presented to the Adjustment Board, as it was in Woolley's case, the Board's "unqualified denial of the claim necessarily implied" (360 U. S. at 607) a ruling that Woolley's discharge was proper.

The lower court decisions in the first *Woolley* case are fully supported by the decision of this Court in the *Price* case. This Court there held (360 U. S. at 617) that "The respondent's submission to the Board of his grievances as to the validity of his discharge precludes him from seeking damages in the instant common-law action." This Court further noted (360 U. S. at 617):

> "So far as appears, all of the Court of Appeals and District Courts which have dealt with this problem have reached the conclusion we reach here. To say that the discharged employee may litigate the validity of his discharge in a common-law action for damages after

> failing to sustain his grievance before the Board is to say that Congress planned that the Board should function only to render advisory opinions, and intended the Act's entire scheme for the settlement of grievances to be regarded 'as wholly conciliatory in character, involving no element of legal effectiveness, with the consequence that the parties are entirely free to accept or ignore the Board's decision * * * [a contention] inconsistent with the Act's terms, purposes and legislative history.'"

Woolley argues that there is a difference between the National Railroad Adjustment Board and a System Board of Adjustment such as is here involved. However, the only difference which he demonstrates (petition, pp. 12-17) is that Congress conferred special jurisdiction on Federal courts to enforce—even in non-diversity cases—decisions of the National Railroad Adjustment Board, whereas Federal courts have jurisdiction of System Board decisions only in case of diversity. Congress has made no other distinction, as it imposed on the carriers and employees the "duty" to establish a "board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 3, Title I, of this Act" (Railway Labor Act, Section 204). In the *Price* case, *supra*, this Court cited certain air carrier cases in support of its conclusion that Adjustment Board decisions upholding discharge are final and binding and preclude litigation. Of course, such air carrier cases involved System Boards, since there is no National Air Transport Adjustment Board.

In *Transcontinental & Western Air* v. *Kop* [illegible], 345 U. S. 653, 659 (1953), this Court pointed out that the System Board procedure is "comparable" to that of the National Board. It further said (345 U. S. at 660) that "the employ-

ment contract conforms to the policy of the Railway Labor Act and the Act provides a procedure for handling grievances so as to avoid litigation and interruptions of service." In *Edwards* v. *Capital Airlines, Inc.*, 176 F. 2d 755, 760 (D. C. Cir. 1949), the court said with respect to a System Board of Adjustment that the "right to create it was reserved to the parties by the original Act, and a duty to create it was imposed, by a later amendment . . . This gives it a public character that cannot be ignored." Numerous other cases, including those cited by this Court in the *Price* case, proceed on the uniform assumption that a System Board is the equivalent of the National Railroad Adjustment Board.

Woolley now seemingly contends (petition, pp. 20-27) that the decisions of the lower courts in the first *Woolley* case are inconsistent with the *Koppal* decision in that the doctrine of *Koppal* would require "exhaustion of administrative remedies" under Florida law prior to court action, whereas appeal to the Adjustment Board (under the first *Woolley* decision and the *Price* decision) would preclude the judicial remedy. That argument was presented in the first *Woolley* case and provides no basis for further consideration of the merits of Woolley's case here. It should be sufficient to note that Koppal did not exhaust his *intra-company* remedy—the preliminary grievance procedure—and there is no suggestion in the *Koppal* case that the "administrative remedy" which must be exhausted includes the Adjustment Board or that if Koppal had carried his case to adverse decision by the Adjustment Board he could nevertheless have relitigated the same issues in court.

There is no inconsistency between any of the decisions cited by Woolley. The uniform pattern of decision is that a discharged employee subject to the Railway Labor Act may, after exhausting any administrative remedies to the

extent required by state law (*Transcontinental & Western Air* v. *Koppal, supra*), has an election either (1) to sue his employer for damages for wrongful discharge (*Moore* v. *Illinois Central R.R.*, 312 U. S. 630 (1941), as explained in the *Slocum* case, *supra*, and the *Koppal* case, *supra*) or (2) to take his case to the Adjustment Board seeking reinstatement and back pay (*Union Pacific Railroad* v. *Price*, and cases cited 360 U. S. at 616-617). "He may not do both." *Woolley* v. *Eastern Air Lines, supra*, 250 F. 2d at 90.

The decision of the Adjustment Board is not subject to judicial review except to the extent that questions of jurisdiction or procedural due process are involved. *Woolley* v. *Eastern Air Lines, supra*, 250 F. 2d at 92; *Sigfred* v. *Pan American World Airways*, 230 F. 2d 13, 17 (5th Cir. 1956); *National Airlines* v. *Metcalf*, 114 So. 2d 229 (1959). Here, as the Court of Appeals held in the first *Woolley* case, "there is no contention that the Board was not properly constituted or that there were other circumstances that would permit a collateral attack . . ." 250 F. 2d at 92.

Since all issues have been fully and properly decided contrary to Woolley's contentions, there is no possible basis for his collateral attack on the first *Woolley* decision, and this action is barred by *res judicata*.

III.

Woolley's petition does not comply with this Court's Rules.

Woolley's petition for certiorari fails to comply with this Court's Rules in the following respects:

(1) It does not state (Rule 23, 1 (b) (iii)):

"The statutory provision believed to confer on this court jurisdiction to review the judgment or decree in question by writ of certiorari."

(2) It does not state (Rule 23, 1 (c)):

"The questions presented for review, expressed in the terms of the case, but without unnecessary detail."

(3) It does not state (Rule 23, 1 (d)):

"The constitutional provisions, treaties, statutes, ordinances or regulations which the case involves, setting them out verbatim and citing the volume and page where they may be found in the official edition."

(4) It does not contain (Rule 23, 1 (e)):

"A concise statement of the case containing the facts material to consideration of the questions presented."

(5) It does not show (Rule 23, 1 (g)):

"the basis for federal jurisdiction in the court of first instance."

Therefore, respondent invokes the provision of this Court's Rules (Rule 23, 4) which states that:

"The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition."

CONCLUSION

In view of the foregoing considerations, the petition for certiorari should be denied.

Respectfully submitted,

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